

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**
1:09cv443

STEELCASE INC.,)	
)	
Plaintiff,)	
)	
Vs.)	MEMORANDUM AND
)	RECOMMENDATION
M. B. HAYNES CORPORATION,)	
)	
Defendant.)	
)	

THIS MATTER is before the court upon defendant's Motion to Dismiss.

Plaintiff timely filed a response to such motion on February 22, 2010, making defendant's Reply due to be filed not later than March 4, 2010. In such response, plaintiff argues that defendant's basis for dismissal of this action -- the pendency of another action in state court -- is fatally flawed inasmuch as such action has been fully resolved. See Response, at p.1 (Docket Entry # 12).¹ Plaintiff has annexed to such response an Exhibit A, which appears to be a Notice of Satisfaction of Judgment as to Steelcase, Inc. Docket Entry # 12-1.² With no reply being filed and plaintiff's

¹ Inasmuch as the Rule 12(b)(6) motion is without factual basis as shown in plaintiff's unrebuted Response, the court will not set forth the extensive standard applicable to such motions for the purposes of brevity.

² Such Exhibit is not accompanied or predicated on an affidavit and is not in certified form from the Clerk of Court.

representations not being countered, the court surmises that defendant no longer has any basis for dismissal of this matter. The undersigned will, therefore, recommend that defendant's Motion to Dismiss be denied as without basis.

* * *

Counsel for defendant is respectfully advised that, as proponent of the Motion to Dismiss, he is obligated to either file a Reply or, if it is determined that a Reply is not necessary, file a notice with court that defendant does not intend to Reply. The Local Civil Rules specifically provide, as follows:

A reply to the response to a motion, if any, shall be filed within seven (7) days of the date on which the response is served, as evidenced by the certificate of service attached to said response. The filing of a reply brief is not mandatory. In any event, a reply brief should be limited to a discussion of matters newly raised in the response. **If the party making the motion does not wish to file a reply brief, it must so inform the Court and opposing counsel promptly in an electronically filed notice.**

L.Cv.R. 7.1(E). This rule enables the court to promptly address pending motions, rather than wait two weeks for a Reply that will never come.

RECOMMENDATION

IT IS, THEREFORE, RESPECTFULLY RECOMMENDED that defendant's Motion to Dismiss (#5) be **DENIED**.

Time for Objections

The parties are hereby advised that, pursuant to 28, United States Code, Section 636(b)(1)(C), and Rule 72, Federal Rules of Civil Procedure, written objections to the findings of fact, conclusions of law, and recommendation contained herein must be filed within **fourteen (14)** days of service of same. **Responses to the objections must be filed within fourteen (14) days of service of the objections.** Failure to file objections to this Memorandum and Recommendation with the district court will preclude the parties from raising such objections on appeal. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986); United States v. Schronce, 727 F.2d 91 (4th Cir.), cert. denied, 467 U.S. 1208 (1984).

Signed: March 18, 2010

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

